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DEVELOPMENT OF THE FEDERAL GOVERNMENT¹

BY HONORABLE THEODORE E. BURTON,
Member of Congress from Ohio.

In the brief time at my disposal, I can only touch superficially upon a few of the principal questions involved in the relation of the national to the state governments. Prior to 1789, it was the despair of statesmen to harmonize two sovereignties each having jurisdiction over the same territory and the same people. Leagues, confederations and federal unions had been tried, but all with more or less discouraging results. Our experiment in the United States has, however, succeeded. Yet we must realize that any federal union must necessarily, in its field of activities and in the balance of powers between the whole and a part, or the parts, respond to changing conditions and emergencies. If the relation between them should be marked by rigidity, if there be no possibility of changing the balance of power between the two, the public welfare would not be subserved. Our constitution was framed in the days of the spinning wheel, the stage coach and the sail boat. Times have changed, and there have been world-wide revolutions in the relations between governments and the people. Laws and constitutions must change with the times. Prime ministers, legislators and presidents must change their views to meet the changing conditions, else they fail of their duty.

Modern civilized peoples, under democratic government and endowed with freedom of action, desire to accomplish ends promptly and in the simplest way. There is ever a powerful tendency to brush aside technicalities, even to disregard settled forms, if they become obstructions. But this disposition, though apparently threatening, cannot be a source of danger; because, unless the modifications which are attempted in the interpretation of established constitutions are acquiesced in as promoting the general weal, they will not be tolerated.

Changes, roughly speaking, have been due to two different

¹In this *ex tempore* address, delivered April 11, 1908, Congressman Burton discussed the paper by Honorable John Sharp Williams on Federal Usurpation.—EDITOR.

kinds of causes. One may be called political. These have been apparent the world over, manifesting themselves in a disposition toward larger nationality, and promoted by patriotism or by sentiment. The desirability as well as the glamour of greater power and influence have shown their effect in uniting peoples of the same blood and race, as in the case of Italy and Germany. Strange as it may seem, nations have gained greater power and enlarged their dominions on the map of Europe more by peaceful amalgamations than by means of war.

Mr. Webster was the great exponent of the supreme control of the federal government. Of him it can be said, as of few statesmen, that he uttered the fiat, "Let there be light, and there was light,"—light on the great questions of the time, light to illuminate the future, light to encourage the patriot and the soldier in the great days of civil strife, and to encourage them to battle for a greater America and a united country. Yet Webster's arguments were for the most part legal and constitutional, and his potent influence was reinforced by the fact that he swam with the tide. Perhaps he foresaw the future. At any rate, his work coincided with forces that were independently operative in his own time.

The other class of changes may be called economic and social. The interchange between counties was not so great when the constitution was framed as between the states in 1908. Philadelphia was further from Pittsburg than it now is from San Francisco. People are now constantly moving to and fro throughout the country. New areas of territory have been settled. The people of every state are interested in the development of the resources of every other state. It is of interest to Pennsylvania and New York that new areas be available for settlement by their surplus population. It is a matter of importance to them that the arid lands of the west should be utilized and made sources of production and wealth for the whole country. The country has a solidarity of interest which it could not have with the old-time means of communication. We have been growing, and are growing, and the most decided manifestation of our growth is that we are nearer together and have year by year a greater community of interest.

Another reason why the federal government is greater than it once was is because of its superior efficiency. It is a matter of common knowledge that if two offenders are to be tried and pros-

ecuted for crime, one in the federal and one in the state courts, there is assurance that he who is prosecuted in the federal court, if he is guilty, will have his deserts, and that promptly. If the prosecution is in the state courts there is a great deal of doubt and delay.

Again, the greater area in which the federal government conducts its operations gives a more comprehensive education, affords a more ample field for reaching correct conclusions and accomplishing great results. Take for instance the geological survey. There are men equal in ability to the members of this service in the employ of the states; but how much more skilfully and satisfactorily can the work be done by men who have the whole country as their sphere of action. The growth of the Agricultural Department, too, is due to no disposition to usurp power which should be left to the states, but to the deserved recognition of the greater care and skill with which its work is done. This department has become a great university, making scientific investigation of the needs of agricultural production everywhere,—alike helpful to the grower of cotton and of grain, alike helpful to the North and the South, the East and the West.

Another factor which has worked in the same direction has been the magnitude of the public works or national enterprises, which in this day require an expenditure and a degree of co-operation difficult to obtain except through the nation. The large expenditures called for often stagger municipalities and minor political divisions.

As I understand my friend Mr. Williams, who has just preceded me, he has introduced a bill for the construction of ordinary highways in the states.

Mr. Williams: That is not true.

Mr. Burton: Well I am glad to hear it.

Mr. Williams: It was a bill giving the surplus to the states.

Mr. Burton: Well I trust there will be a large surplus, but I trust that it will not be disposed of in the way you suggest.

These examples show that there are many undertakings imposed upon the federal government which might well be in charge of the states, and naturally would be. Those who favor a limited sphere of action for the federal government certainly cannot expect their theories to be adopted while they are themselves seeking appropria-

tions from the federal treasury for objects which belong to local communities. I watch with some apprehension these tendencies to rely upon the federal government, for I believe that projects are carried to a successful completion approximately as they are undertaken by those who are in immediate touch with them, by those who can scrutinize and inspect them with accurate judgment to determine whether or not they are wise, and who at the same time have the salutary check which rests upon those who must bear the expense.

It is clearly inevitable that the field and activities of the federal government must increase. Such increase is not the result of any change in political theory or of any usurpation of power. It is due to the greater scope of public undertakings. The most progressive nation on the globe must display a growth and an enlargement of its sphere of action or it will fail to serve its purpose. Whether a gradual readjustment of the relations between central and state governments comes by constitutional amendments or by interpretation of existing laws and constitutions,—such a re-adjustment is sure to come. The amendments to the federal constitution have been very few, but the wisdom of the founders and sufficiency of this great charter have been shown by our ability to meet new conditions without revolution, and without menace to the rights of individuals or states.

This tendency to centralization has no doubt been greatly promoted by the failures of states and minor communities to prove equal to the occasions which arise. With a state it is just as with an individual. If the individual shows ability and practical interest he will have influence in political affairs. If a state displays civic pride, and its citizens grapple with the questions of the times and solve them, if its officials prove themselves equal to each new emergency, then that state will have no occasion to complain of the enlarged powers and influence of the federal government. It is especially true that if the states seek to have the federal government do something for them which each state might do for itself, this will notably strengthen the power of the federal government. Under an ideal condition each city and state should not only be actuated by a desire to accomplish the greatest possible good for the whole people, but should be marked as well by efficiency in attaining great results. If states fall below this ideal condition it is not the fault of the central government, but of the citizens of each state.

I cannot believe that we are to suffer from the usurpation of the executive or any other power. How can there be usurpation when this free people every four years can choose a President and review his policies? Is it possible? President Roosevelt showed the disposition to take the steps which have exposed him to the accusation of usurpation; yet later, when his claims were presented to the people in 1904, he was re-elected by a majority so overwhelming that it is unparalleled in the whole history of popular elections. Even my friend Mr. Williams is maintaining a filibuster. Why? Because even he coincides with this same usurping President in favoring certain legislation.

I may refer to a few specific instances of alleged abuse of power which have been mentioned. Was it not proper and necessary that the federal government should undertake the work of irrigation, not merely because it was for the public welfare but because the problem could be solved in no other way? It was found that in any efficient solution to this question plans must have regard to more than one state. Watercourses furnishing the means of irrigation had their sources in one state and flowed into another. It is true that incidentally the land of private individuals was furnished with water from these irrigation canals. But the great object and end was to bring together the waters of one state and the dry lands of another. There is another standpoint from which this policy may be justified, and that is the right of the government to deal with its own property, that is with its public lands. The recent recommendations of the President looking to the conservation of water for power, for irrigation, for the promotion of navigation and its treatment for clarification with a view to preventing injuries to public health, were based upon the idea that all these uses were so inextricably interwoven that the whole subject should and must be treated as one great problem. With the thought that land is an asset of the people, comes the one that water is a source of wealth which must not be neglected, but the management of which cannot be confined to any one state or limited jurisdiction. A combination of all is necessary for the proper utilization of each part.

Let no man be afraid of the republic or of the extension of federal power. This extension will go on normally as befits a growing and a free people. Many of the evils which are complained of could be entirely avoided if greater pains were taken to thoroughly

establish distinctive jurisdictions for different activities and objects of government. I am strongly inclined to believe that the interstate railways of the country must at an early day be incorporated under the federal government, and be under its jurisdiction. They are a part of the nation's life. They are its great arteries of trade. If a road runs through six or eight states and one state seeks to lower rates almost to the point of confiscation that is injurious to all the other states. In a city in the Middle West an ordinance was passed that no express train should pass through the wide limits of the municipality at a greater rate of speed than four miles an hour. What was the result? Express trains between West and East were delayed twenty minutes by this absolutely unnecessary regulation, framed with a view to compelling the railway company to make certain concessions to the municipality. If a score of towns had adopted similar ordinances communication between the separate states of the country would have been very much hampered.

In some enterprises of large scope the almost forgotten clause of the constitution allowing agreements between states by the consent of Congress might be utilized to advantage. In many minor matters, such for illustration as the construction of roads, certainly those which are not interstate, entire control should be left to the states. They have their own responsibilities, their citizens who desire to take an active part in state affairs; and this citizenship will not accomplish that which it is qualified to accomplish, without leaving to the states a proper sphere of action. But let us not be afraid of usurpation. The dominant influence of a strong hand may be exerted in a case of popular indifference, but the government of this country rests with the people, and though they may be negligent for a time, the great fundamental principles will in the end prevail. You, the electors, are the high priests in the temple of good government. If profane hands enter and defile the altars of liberty it is because you who should be their defenders stand idly by.